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Customer Number

Patent
Case No.: 58504US002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: SOLYNTJES, ALAN J.
Application No.: 10/750077 Confirmation No.: 2080
Filed: December 31, 2003 Group Art Unit 3771
Title: PERSONAL RESPIRATORY PROTECTION DEVICE THAT HAS A
PERMANENT OR SEMI-PERMANENT BAYONET CONNECTION

REQUEST FOR REHEARING UNDER 37 CFR § 41.52

Mail Stop: Appeal Brief-Patents
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CERTIFICATE OF TRANSMISSION [37 CFR § 1.8(a)]

I hereby certify that this correspondence is being transmitted to United States Patent and Trademark Office on the date shown below via the Office electronic filing system.

September 13, 2011
Date

/Tracey L. Riley/
Signed by: Tracey L. Riley

Dear Sir:

This is a Request for Rehearing under 37 CFR § 41.52(a)(1) to the Decision on Appeal issued by the Board of Patent Appeals and Interferences mailed July 22, 2011.

Fees

- ☒ Any required fee under 37 CFR § 41.20(b)(2) will be made at the time of submission via EFS-Web. In the event fees are not or cannot be paid at the time of EFS-Web submission, please charge any fees under 37 CFR § 1.17 which may be required to Deposit Account No. 13-3723.
- ☒ Please charge any additional fees associated with the prosecution of this application to Deposit Account No. 13-3723. This authorization includes the fee for any necessary extension of time under 37 CFR § 1.136(a). To the extent any such extension should become necessary, it is hereby requested.
- ☒ Please credit any overpayment to the same deposit account.

Argument

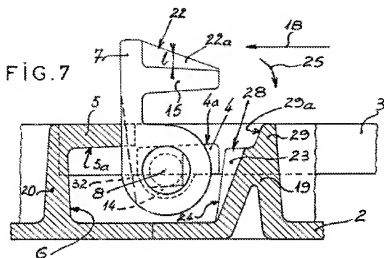
The Board issued a Decision on Appeal affirming the Examiner's rejections of claims 1 through 14 and 17 through 27 under 35 U.S.C. § 103(a) as obvious in view of U.S. Patent No. 5,732,695 (Metzger) and U.S. Patent No. 4,364,689 (Dumortier), and claims 1 through 3, 7, 8, 10 through 16, 18 through 20, 23, and 24 under 35 U.S.C. § 103(a) as obvious in view of Metzger and U.S. Patent No. 5,741, 084 (Del Rio et al.). Appellants respectfully submit that in affirming the rejections, the Board has misapprehended or overlooked several claim limitations as provided below. Specifically, the Board has misapprehended or overlooked the requirements of claim 1, which prevent the combination of the respirator of Metzger and the connection for a manhole cover described by Dumortier from rendering claim 1 obvious. Secondly, the Board also has not properly interpreted the scope and content of Dumortier, and in so doing has arrived at a decision inapposite to the requirements of 35 U.S.C. § 103. To make this point clear, applicants submit the attached Affidavit of Alan J. Solyntjes. Finally, appellants ask the Board to exercise their authority for amending the claims to eliminate the rejection based on Metzger and Del Rio.

Rejection of Claims 1 through 14 and 17 through 27 in view of Metzger and Dumortier

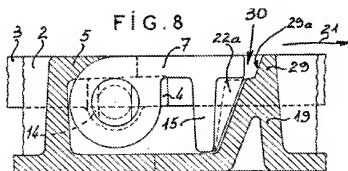
The Board affirmed the Examiner in rejecting claims 1 through 14 and 17 through 27 under 35 U.S.C. § 103(a) as obvious in view of Metzger and Dumortier. In doing so, the Board indicated that a "person of ordinary skill in the art would have recognized that incorporating the locking device of Dumortier with the filtration device 10 of Metzger would provide the benefit of preventing accidental pivoting of the filtration device 10 from the face mask 14." Decision, p. 6. Appellants respectfully disagree with this statement, which misapprehends or overlooks appellant's arguments and thereby arrives at a decision not in accord with the requirements of 35 U.S.C. § 103.

Firstly, the Board should be advised that Dumortier's connection feature would not be applicable for respirator use. The connection in the Dumortier manhole cover assembly is intended only to function in a horizontal orientation, such as in a roadway, and would not provide a connection that is "incapable of being inadvertently removed or separated" in a personal respiratory protection device that is used in many possible orientations. The Dumortier device relies on gravity to remain closed. The device uses a pawl 7 that is pivotably mounted at

one of its ends such that when the flange 15 is in an upright position shown in Figure 7, it can be grasped to lift the cover 3 from the ring 2:



Brief on Appeal, p. 7. This connection, however, only provides a locking function when used in a horizontal orientation such that the force of gravity maintains the pawl 7 in the orientation shown in Figure 8:



The connection does not provide a locking function in other orientations in which gravity is not acting to maintain pawl 7 in a locked position. Further to this point, the Board is invited to consider the attached Affidavit of Alan J. Solyntjes, particularly paragraph 6, where it is explained that the manhole cover of Dumortier is used in a horizontal orientation and would not provide a connection that is "incapable of being inadvertently removed or separated" if

incorporated into a personal respiratory protection device used in many different orientations. The Dumortier device would come open if used in orientations outside of those shown in the figures outlined above. Inverting the product could provide an uncoupling, which would be an inadvertent detachment outside of the claimed invention. For this reason alone, the combined teachings of Metzger and Dumortier would not have led a person of ordinary skill to the features that comprise the present invention, even if combined.

Secondly, the Board misinterpreted the scope and content of Dumortier. Please note that the definition of “incapable of being inadvertently removed or separated” defined in the specification, and identified in the Brief on Appeal at page 5, means that the first and second portions are permanently joined or can *only* be separated through use of a key. That is, the connection is *only* non-destructively separable by using a key. The connection described by Dumortier, however, can be separated non-destructively *without* the use of a key. For example, Dumortier indicates that a “lever is especially advantageous when pulverulent deposits may interfere with displacement of the pawl between its open and closed positions,”¹ but makes no suggestion that the connection is “only” non-destructively separable with the use of a key. In fact, the connection is unlikely to provide any locking function whatsoever in orientations in which the force of gravity does not maintain the pawl in a locked position. Further, pulverulent deposits would not occur in respiratory applications, making Dumortier’s lever unnecessary. Accordingly, the connection of Dumortier is not “incapable of being inadvertently removed or separated” as required by claim 1.

Ultimately, the combination of the devices of Metzger and Dumortier does not result in a device having a connection that is “incapable of being inadvertently removed or separated.” The Board misapprehended or overlooked this claim limitation and/or the Dumortier disclosure in affirming the rejection of claims 1 through 14 and 17 through 27.

For these reasons, it is respectfully requested that the rejection be reconsidered and reversed.

¹ See Dumortier at column 6, lines 25-31.

Rejection of Claims 1 through 3, 7, 8, 10 through 16, 18 through 20, 23 and 24 in view of Metzger and Del Rio et al.

The Board affirmed the Examiner in rejecting claims 1 through 3, 7, 8, 10 through 16, 18 through 20, 23, and 24 under 35 U.S.C. § 103(a) as obvious in view of Metzger and Del Rio et al. In doing so, the Board indicated that the device of Del Rio et al. requires “a force, and therefore an input,” to release the nose piece 14 from the motor housing 12. Appellants respectfully disagree with this statement and submit that the Board has misapprehended the definition of “key” provided in the application.

Claim 1 of the present application requires a connection that is “incapable of being inadvertently removed or separated,” meaning that the first and second portions are permanently joined or can only be separated with the use of a key that unlocks the first and second portions without breaking or destroying either portion.” The present application further defines “key” to mean an “implement, device, element, or input that functions, as intended, for unlocking the first and second portions of the bayonet attachment system.” The Board construed this definition broadly in concluding that a mere “force” is a sufficient input to render claim 1 obvious. Although appellants believe that the Board’s conclusion runs counter to the description of a connection and a key described in the present application, which further provides that the “connection therefore cannot be inadvertently disengaged or unlocked through accidental positive torque.” P.3, appellants nonetheless encourage the Board to exercise its authority under 37 CFR § 41.50(c) regarding how the application may be amended to overcome this rejection. Specifically, an amendment to the specification which removes the term “input” from the definition of “key,” is suggested. Entry of this amendment would eliminate the broad application of the claim upon Del Rio et al., which was not intended by applicants’ original definition of “key,” and would necessitate withdrawal of the rejection of claims 1 through 3, 7, 8, 10 through 16, 18 through 20, 23, and 24.

Conclusion

Appellants respectfully submit that the requisite criteria under 37 CFR § 41.52(a)(1) for establishing the need for a rehearing has been met. Therefore, Appellants respectfully request

that this Request for Rehearing be granted, and that the Board issue a decision reversing the final rejections of claims 1 through 27.

Respectfully submitted,

September 13, 2011

Date

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